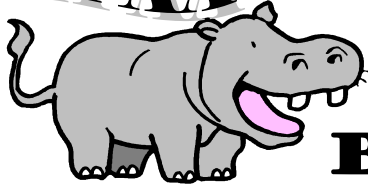

HIPAA



DEPARTMENT OF HUMAN SERVICES Health Insurance Portability and Accountability Act

BULLETIN



September 2002 r Bulletin Number 2

Privacy

What Are the Final Privacy Rules?

On November 3, 1999, the Federal Department of Health and Human Services (HHS) issued a proposed HIPAA Privacy Rule. More than 52,000 comments were received regarding the proposed Rule. After reviewing the comments, HHS issued a final Rule on December 28, 2000. However, additional comments were received regarding the operation of the Privacy Rule on numerous sectors of the health care industry. In March 2002, HHS issued proposed revisions to the Privacy Rule.



On August 14, 2002, HHS issued the Final HIPAA Privacy Rule. The final rule is designed to fix problems with the previously published rule by:

- Making it less difficult for clients to get health care quickly;
- Simplifying paperwork requirements; and,
- Clarifying marketing restrictions.

The following is a summary of the revisions:

❖ Notice and Consent Requirements

The original rule required clients to give consent for use or disclosure of protected health information before receiving treatment. This would have severely limited a client's access to health care by:

- requiring a client to visit a pharmacy in person to sign paperwork before prescriptions could be filled;
- preventing emergency health care providers from treating clients who refused to sign the privacy consent form;
- restricting referrals to specialists, hospitals and other providers; and
- preventing treatment over the telephone.

To fix these problems, the revisions removed the consent requirements that would interfere with delivery of health care and strengthening the requirements for providers to notify clients about their privacy rights and practices.

❖ Oral Communications

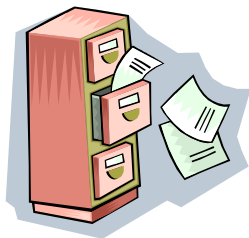


Routine conversations between health care providers involved in a client's care would have violated the original rule. The revisions continue to cover oral communications, but allow providers to discuss a client's treatment with other providers involved in their care without fear of violating the rule if they are overheard.

❖ Marketing

Based on consumer concerns that the marketing provisions were ineffective to protect patient privacy, the revisions explicitly require pharmacies, health plans and other covered entities to first obtain the individual's specific authorization before sending them any marketing materials.

❖ **Parental Access to Children's Records**



The original rule limited a parent's access to their child's medical records. The revisions clarify that state law governs disclosures to parents of a child's medical record.

A copy of the rule is available on the Web at:
<http://www.hhs.gov/ocr/hipaa>

What does the Privacy Rule Require?

Providers will be required to:

❖ **Guarantee patient privacy rights by:**

- Giving patients clear, written explanations of how the provider may use and disclose their health information;
- Ensuring patients can see and get copies of their records, and request amendments;
- Making a history of non-routine disclosures accessible to patients;
- Obtaining patient consent before sharing their information for treatment, payment, and health care operations;
- Obtaining patient authorization for non-routine disclosures and most non-health care purposes; and,
- Allowing patients to request restrictions on the uses and disclosures of their information.

❖ **Adopt written privacy procedures to include:**

- Who has access to protected information,
- How it will be used within the agency, and
- When the information may be disclosed;

❖ **Ensure that business associates protect the privacy of health information**

❖ **Train employees in the provider's privacy procedures**

❖ **Designate a privacy officer who is responsible for ensuring the privacy procedures are followed**

All organizations that provide medical care (including counseling) and maintain personal health information must implement the HIPAA regulations by **April 14, 2003**.

Electronic Transactions

Do all DHS providers have to submit billings electronically?

No. DHS will continue to accept 520s and e520s billing forms.

What is the deadline date for compliance with the Electronic Transactions Standards?

The original dateline for "covered entities" (health care providers, health care plans and clearinghouses who submit health information in electronic form) to comply with the standards for electronic transactions was October 16, 2002. However, the deadline has been extended one year to **October 16, 2003**. To qualify for the extension, covered entities must submit a **Compliance Plan** by **October 15, 2002**.



The Compliance Plan takes just a few minutes to complete and requires answering questions about compliance concerns and current status in the implementation process. The easiest and fastest way to file a plan is to submit it electronically. Just complete the plan on-line, click "Submit" at the end, and it will be on its way. An on-line confirmation number will be issued that serves as acknowledgment that the plan was received. The Compliance Plan form is available at:

<http://www.cms.gov/hipaa/hipaa2/ASCAForm.asp>

Utah Department of Human Services and the Utah Department of Health are submitting a joint Compliance Plan that will allow them the extra year to get ready to accept and transmit electronic billings.

Will DHS providers be able to electronically submit billings to DHS?

Yes. DHS is designing the new system and it should be operational by October 2003.

To date the following

procedures have been decided:



- DHS will accept HIPAA 837 billing transactions. Providers submitting electronically will no longer receive 520 forms from DHS and DHS will not accept 520 forms from these providers.
- Upon receiving the 837 a functional acknowledgment (997) will be returned.
- Within three days after receiving the 837 an acknowledgment of accepted and rejected claims (277FE) will be returned.
- DHS will return a HIPAA 835 transaction response to each claim with adjudication information. Upon receiving the 837 a functional acknowledgment (997) will be returned.
- HIPAA claim status requests (276) will be accepted and a claim status response (277) will be returned.
- Transmittals will be sent and received via UHIN (Utah Health Information Network)
- Transmittals will be sent and received via an agreed upon electronic postal service.

How can providers have input into developing of the DHS electronic billing system?

DHS is seeking input from providers on the design and operation of the new system and is interested in identifying the providers who will be submitting billings electronically. We want to hear from you! Please contact the following

division representative if you plan to submit electronic billings.

Division of Aging & Adult Services (DAAS)

Sheldon Elman, (801) 538-3921

selman@utah.gov

Division of Child & Family Services (DCFS)

Billing Issues:

Chuck Parsons, (801) 538-4683

chuckparsons@utah.gov

Privacy Issues:

LeRoy Franke, (801) 538-4078

lfranke@utah.gov

Division of Substance Abuse & Mental Health (DSAMH)

Janina Chilton, (801) 538-4072

jchilton@utah.gov

Division of Services for People with Disabilities (DSPD)

Steve Wrigley, (801) 538-4073

swrigley@utah.gov

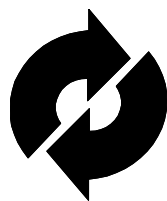
Division of Youth Corrections (DYC)

Mary Hoffman, (801) 538-8279

mhoffman@utah.gov

How Does a Provider Know Which New HIPAA Codes to Use?

HIPAA transactions require the use of standardized national code sets to identify medical and health care related procedures and



treatments. One of the HIPAA-approved code sets is the Common Procedural Terminology, 4th edition, procedure set.

The "CPT-4" designates several procedure codes that are relevant to **alcohol, substance abuse and mental health treatment**. DHS is working in conjunction with Medicaid to "crosswalk" the current DHS services codes to HIPAA approved procedure codes. For example, the DCFS/DYC billing code for medication management services by a physician is "YMM." The equivalent HIPAA approved CPT-4 procedure code is "90862"

(pharmacological management). This means if you are billing electronically, the service is identified by the code “90862” rather than “YMM.”

The Divisions are working to develop a “crosswalk” table that will identify the current DCFS service code and the equivalent HIPAA approved procedure code(s). We hope to have this task completed in the next few months, however, some services, such as residential treatment, do not yet have a HIPAA recognized procedure code. The Center for Medicare and Medicaid Services has established a process for new procedure codes to be approved and we are still awaiting their decisions for several codes.

Penalties

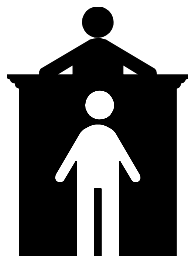
What Happens to Those Who Don't Comply with HIPAA?

This “hippo” has teeth. This may be the first law in U.S. history where handing out health care information can land you in jail. The penalties for not complying with any provision of HIPAA are tough and fall into two categories: civil penalties and criminal penalties.



The civil penalties include \$100 per violation up to a maximum of \$25,000 per person, per year.

The criminal penalties are even more severe:



- \$50,000 with one year in federal prison for basic offenses;
- \$100,000 with five years in prison for violation involving false pretenses;
- \$250,000 with 10 years in prison for intentional disclosure with intent to sell, transfer or use health information for commercial advantage, personal gain or malicious harm.